IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

FIRST APPEAL NO. 107 OF 1993

The State of Maharashtra
(At the instance of the Special
Land Acquisition Officer, No.I,
Nashik.) .. Appellant.

Vs.

Balmukund Shankarlal Sharma
Occ. Agriculturist,
R/o Malegaon,Dist. Nashik. ..Respondent
(Org.Claimant).

Mr. K.K. Tated, A.G.P. for State.
Shri Pramod M. Joshi for the respondent.

CORAM : F.I. REBELLO &
ANOOP V.MOHTA, JJ.

DATE : 31ST AUGUST, 2004.

ORAL JUDGMENT (PER F.I.REBELLO, J.)

. This is an appeal by the State challenging the award of the reference Court in L.A.R.No.5 of 1985, by which the reference Court has fixed market value of the land at Rs. 350/- per sq. meter. Notification under Section 4 was issued on 27/1/1983. The Land Acquisition Officer has fixed market value at Rs. 125/- per sq. meter by his award dated 15/2/1985. That had been increased by the reference Court as noted earlier to Rs. 350/- per sq. meter. The land in the Town Planning Scheme was reserved for a School building. On behalf of the appellant the learned Counsel points out that

reference Court totally ignored both oral and documentary evidence on record, while fixing the market value. It is pointed out that the evidence of the claimant, as also a witness was considered and the market value could have been fixed at Rs. 350/- per sq. meter. Even the sale deed Exh.43 which was proved through examination of witness, Suresh Deoram Bhavsar would show that the plot of the land admeasuring about 185.8 sq. meters was sold at price of Rs. 38,000/- which works out at Rs. 403.50 per sq. meter. This, it is pointed out was from the remaining part of the plot which has been acquired. Referring to the other deeds, it is pointed out that those are small pieces of lands and as such could not be relied upon for arriving at the market value. Apart from that, from the evidence of the claimant himself it would be clear that in 1978-80 he had sold developed plots of the adjoining lands for much lesser amounts compared to sale instance Exh.43.It is therefore, submitted, that appeal filed by the State be allowed.

. On the other hand on behalf of the respondent/claimant, their learned Counsel points out to the evidence of Trimbak Baburao Mali, Claimant’s witness

No.2, who is an officer of the Malegaon Merchants Co-operative Bank. In his evidence it is pointed out that the Bank purchased a plot of land Exh.34, admeasuring 183.10 sq. meter,C.T.S. No.79 for Rs. 2 Lakhs, and C.T.S. plot 552 measuring 20.10 sq. meters for Rs. 1,25,000/- under Exh.35. These are the sale of lands, which were purchased by the Merchant Co-op Bank after sanction from the Registrar of Co-operative Societies. The value of the land as worked out is very high. That would indicate that the price of the land had been increasing in to locality.

2. With the above, first we have to consider the respective contentions. There is no dispute that the land has building potential and is situated near Old Agra Road. on the northern side the prices are more than on the southern side of the Agra Road because there are shops and factories which have come up to the north side. Witness, Suresh Deoram Bhavsar in his evidence has deposed that on 5th February, 1983, he had purchased under Exh.43 a plot measuirng 185.8 sq. meters at the rate of Rs. 204.52 per sq. This plot was already developed, when purchased by this witness. This is part of the plot which was not acquired. He denied that he

had purchased the plot at whatsoever prices on account of the proposed development on the land intending to be acquired. He had purchased the land for constructing building. The claimant examined himself, as witness No.1. It is his case that Bombay Agra Road from the property is situated at the distance of 400 feet and there is development all around. A shopping complex, Cinema House,Banks Insurence offices are situated on the old Agra Road. There is an approach road known as "65 feet width road". In his cross-examination he has deposed he had made plots which he had sold of the remaining land which was not acquired.

3. From the evidence which has come on record we see no reason to reject Exh.43 which has been proved through Suresh Deoram Bhavsar, from the evidence of other witness Trimbak Baburao Mali, an officer of the Merchant Co-Operative Bank the prices covered by Exh.34 and 35 are about Rs. 1000/- per sq. meter but on that plot there was a house. The land was purchased by the Bank for the purpose of constructing the bank’s building.

. All this would indicate that there has been an

appreciation of the prices of the land after 1980. Reliance therefore, can be placed on the evidence of the claimant at Exh. 43. The plot formed part of the land which was not acquired. The price was Rs. 204.52 per sq. meter. Considering the fact that the acquired plot would require some development we propose some deductions We are inclined to deduct a sum of Rs. 29.52 from the sale price of Rs.. 204.52 in Exh.43. The market value of the price of the land be fixed at Rs. 175 per sq. Meter.

4. In the light of that we partly allow the appeal, and partly set aside the award of the learned reference Court dated 13th July, 1992 in so far as market value is concerned. The respondents therefore, are entitled to compensation and consequential benefits at the rate of Rs. 175/- per sq. meter of the acquired land as market value. The reference Court, before whom the amounts were deposited and if the amount more than which the Respondent are entitled to is withdrawn, to direct the Respondent to make refund based on the order now passed in appeal. If the respondent have withidrawn more than the amounts they are entitled in terms of the award as modified the balance amount would be refunded with

interest at the rate of 6% p.a. from the date when the money were withdrawn, up to the date the amount would be paid to the appellants/State.

. Parties concerned to act on a simple copy of this order, duly authenticated by the Court Stenographer of this Court.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]